

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-196
Table of Allotments,) RM-9151
FM Broadcast Stations.)
(La Fayette, Georgia))

NOTICE OF PROPOSED RULE MAKING

Adopted: August 27, 1997

Released: September 5, 1997

Comment Date: October 27, 1997

Reply Comment Date: November 12, 1997

By the Chief, Allocations Branch:

1. The Commission has before it a Petition for Rule Making filed by Tennessee Instructional Radio ("TRI") requesting deletion of Channel 298A at La Fayette, Georgia. As noted in the Petition for Rule Making, such action would require dismissal of the pending construction permit application by Radix Broadcasting, Inc. for the vacant Channel 298A allotment at La Fayette (File No. BPH-920304MH).

2. In support of its Petition for Rule Making, Tennessee Instructional Radio refers to the fact that the Federal Aviation Administration ("FAA") has concluded, at two different proposed sites, that a proposed facility at La Fayette would cause electromagnetic interference (EMI) to air navigation. In a Supplement to its Petition for Rule Making, TIR submitted an engineering exhibit addressing the issue of EMI interference to a Channel 298A allotment at La Fayette, Georgia. In that exhibit, TIR delineated the area in which a Channel 298A transmitter site could be located and still comply with the minimum separation requirements set forth in Section 73.207 of the Rules as well as the principal city coverage requirement contained in Section 73.315(a) of the Rules. In that area, TIR evaluated seven different sites using Version 4.211 of the FAA Airspace Analysis Model - the computer program used by the FAA to predict EMI. Even at the minimum permissible Class A FM effective radiated power of 100 watts, there would be intermediate frequency (IM) interference at each of these sites. In view of the FAA "Zero Tolerance" policy on matters involving safety of air navigation, TIR concludes that there is no reason to believe that the FAA would approve any site for a Channel 298A operation at La Fayette.

3. In light of the above and the fact that the current applicant for the channel has not opposed the requested rulemaking, we propose to delete Channel 298A at La Fayette, Georgia.¹ We would concurrently dismiss the application of Radix Broadcasting, Inc. for this allotment. We see no public

¹Ordinarily, we would not entertain a petition to delete a channel for which an application is pending. However, where the applicant has been served and expresses no opposition to the petition, where it has a history of unsuccessful siting attempts, and where a convincing prima facie showing of impossibility is made by the petitioner, we believe the better course in the public interest is to seek comment on the proposal.

interest benefit in maintaining a defective allotment that cannot be implemented. Deletion of Channel 298A at La Fayette would make spectrum available to other parties wishing to either improve existing facilities by application or file a petition for rule making seeking new or improved facilities.² We see no public interest benefit in maintaining an existing allotment in the FM Table of Allotments that cannot be implemented and provide service to the public.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below to read as follows:

<u>Channel No.</u>		
<u>Community</u>	<u>Present</u>	<u>Proposed</u>
La Fayette, Georgia	298A	-----

5. The Commission authority to institute rule makings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

6. Interested parties may file comments on or before October 27, 1997, and reply comments on or before November 12, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the following:

Linda J. Eckard
Roberts and Eckard, P.C.
1150 Connecticut Avenue
Suite 1100
Washington, D.C. 20036

Rich Gwyn
Radix Broadcasting, Inc.
Box 746
La Fayette, Georgia 30728

7. IT IS ORDERED, That a copy of this Notice of Proposed Rule Making be sent BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following:

Rich Gwyn
Radix Broadcasting, Inc.
Box 746
La Fayette, Georgia 30728

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 418-2177. For the purposes of this restricted notice and comment rule making proceeding, members

²In this regard, we emphasize that in the event we ultimately delete Channel 298A at LaFayette, Georgia, we would not accept either an application or petition for rule making made possible by that action until the effective date of the deletion. We also note that an application would receive cut-off protection on the date that it is filed.

of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by and court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments, Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.